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Attorney for David Nosal

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR-08-0237-EMC
	)	
Plaintiff,	)	DEFENDANT DAVID NOSAL'S MOTION
	)	FOR <i>BRADY</i> MATERIAL REGARDING
Vs.	)	KORN FERRY INTERNATIONAL'S
	)	THEFT OF TRADE SECRETS
DAVID NOSAL,	)	
	)	-and-
Defendant.	)	REQUEST FOR EVIDENTIARY HEARING
	)	
	)	Honorable Edward M. Chen
	)	
	)	Hearing Date: February 7, 2018
	)	Time: 2:30 pm
	)	
	)	

Defendant, David Nosal, by and through his attorney, Steven F. Gruel, hereby submits this  
DEFENDANT DAVID NOSAL'S MOTION FOR BRADY MATERIAL REGARDING KORN  
FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS and REQUEST FOR AN  
EVIDENTIARY HEARING.

*DEFENDANT DAVID NOSAL'S MOTION FOR BRADY MATERIAL  
REGARDING KORN FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS*

STATEMENT OF FACTS

On January 8, 2014, Mr. Nosal was sentenced. At sentencing, two federal prosecutors urged the Court to use Nosal's sentence to send a message to the community that illegal conduct consisting of trade secret theft would not be tolerated. A custodial sentence for Mr. Nosal, as one prosecutor observed, would ring like a "bell" warning that this conduct would not be tolerated. In describing trade secret theft, another prosecutor plainly put it that "stealing is stealing" whether its cash or data. If the message of general deterrence was to be effectively delivered, then Nosal, the prosecutors urged, had to go to prison.

Based on the prosecutors' arguments and representations, the Court agreed. Mr. Nosal was sentenced to 12 months and 1 day in federal custody.

The Nosal appeal then went forward. On July 5, 2016, the Ninth Circuit affirmed the conviction. Mr. Nosal next petitioned the United States Supreme Court for a Writ of Certiorari. On October 10, 2017, Nosal's petition was denied.

However, on March 29, 2017, while the Nosal Petition to the Supreme Court was pending, a large executive search company named Spencer Stuart (SSI) filed a lawsuit in Chicago, Illinois outlining that Korn Ferry International and two high executives at SSI (Mr. Truc and Mr. Paquet) engaged in a well-orchestrated ruse to steal highly confidential trade secret information from computers belonging to SSI. *Gruel Declaration; Exhibit A*. In fact, as alleged by SSI, the valuable trade secrets stolen by Korn Ferry with the ongoing assistance and deception by Truc and Paquet, resulted in Korn Ferry obtaining a "blueprint" for Spencer Stuart's confidential executive searches in the automotive industry, and thus, for how "most effectively to compete and to steal business away from Spencer Stuart."

Given that Mr. Paquet is a citizen of France, SSI filed a similar theft of trade secrets in federal court in the Eastern District of Illinois. *Gruel Declaration; Exhibit C*.

1 As outlined in undersigned counsel's supporting declaration, both civil lawsuits quietly  
2 settled within months. Mr. Truc and Mr. Paquet are now Korn Ferry employees. *Gruel*  
3 *Declaration; Exhibit D*. When contacted by undersigned defense counsel, an attorney for SSI  
4 said that because the civil suits were settled with nondisclosure provisions he could not discuss  
5 anything about these cases.

6 On December 20, 2017, defense counsel alerted the government about Korn Ferry's trade  
7 secret theft from SSI and the fraudulent scheme of directing two SSI executives to steal data  
8 from SSI computers before absconding to their new employer, global giant Korn Ferry. The  
9 government displayed no interest in this information. To the contrary, the government deemed  
10 the information irrelevant.

11 On January 8, 2018, the defense emailed a copy of the SSI lawsuit to the government.  
12 Pointing directly to *Brady v. Maryland*, 373 U.S. 83 (1963) the defense requested, via emails to  
13 the government, any and all *Brady* material directly pertaining to Korn Ferry and its two  
14 conspirators' illegal actions. Now, directly possessing this information and the SSI complaint  
15 against Korn Ferry and Mr. Truc, the government has a duty to investigate for *Brady* material.  
16 *Kyles v. Whitley*, 514 U.S. 419 (1995).

17 Although the government apparently located and provided the defense with a copy of the  
18 federal lawsuit against Paquet, no further information or material was disclosed. Instead, the  
19 government's apparent position is that because Mr. Nosal is convicted, Korn Ferry's recent trade  
20 secret thefts from a direct competitor are not relevant. Plus, the government believes that the  
21 Ninth Circuit remand strictly limits its obligations. In short, notwithstanding their previous  
22 laudable words for "general deterrence," or that "stealing is stealing," and symbolic "bell"  
23 ringing to the business community, the government's reaction to Korn Ferry's blatant disregard  
24 of the "message" from the Nosal sentencing is to do nothing.

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26  
DEFENDANT DAVID NOSAL'S MOTION FOR BRADY MATERIAL  
REGARDING KORN FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS

1 The government's inaction is simply wrong: it is axiomatic that *Brady* equally applies at the  
 2 punishment and sentencing phase. Some prosecutors may think of *Brady* myopically as only  
 3 addressing evidence that relates to whether a defendant is guilty and, consequently, once a  
 4 defendant has been convicted there cannot by definition be any *Brady* material. *Brady and*  
 5 *Sentencing*, National Law Journal, October 27, 2008. *Gruel Declaration; Exhibit I*. One of the  
 6 oft-overlooked aspects of *Brady* is that the decision expressly extends the government's  
 7 disclosure obligation to the sentencing phase in addition to the guilt phase of criminal  
 8 proceedings. *Brady*, 373 U.S. at 87. Id.

9 Given the backdrop of this case, including Mr. Nosal's Petition for Writ of Error *Corum*  
 10 *Nobis* along with the Declaration of Steven Gruel, the defense respectfully requests that the  
 11 Court order the government to investigate and provide to the defense all *Brady* material  
 12 pertaining to Korn Ferry's theft of trade secrets from Spencer Stuart. In light of the obvious  
 13 parallels between Mr. Nosal's case and the Korn Ferry – Spencer Stuart case, this *Brady* request  
 14 should produce material which will undoubtedly have profound relevance and impact on the  
 15 Court's custodial sentence and restitution order.

#### 16 ARGUMENT

17 ***“Compliance with discovery obligations is important for a number of reasons. First and***  
 18 ***foremost, however, such compliance will facilitate a fair and just result in every case, which is***  
 19 ***the Department's singular goal in pursuing a criminal prosecution”***

20 United States Attorney's Manual; Section 165 - Guidance for Prosecutors  
 21 Regarding Criminal Discovery

22 The Department of Justice's singular goal expressed above remains true even at this stage in  
 23 the Nosal case. The government, despite the goal expressed in its own manual, has taken the  
 24 position that it is not in possession of any *Brady* information that has not already been disclosed  
 25 to the defense regarding the conviction in this case and that material related to the Korn Ferry

26 *DEFENDANT DAVID NOSAL'S MOTION FOR BRADY MATERIAL*  
*REGARDING KORN FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS*

1 theft is irrelevant. Likewise, the government pointing to the Ninth Circuit’s remand, uses it as a  
 2 further deflection from its *Brady* obligation.

3 However, a “fair and just result” in the Nosal case demands departure from the government’s  
 4 “myopic” approach to its *Brady* obligation. In conjunction with his Petition for Writ of Error  
 5 *Corum Nobis*, Mr. Nosal respectfully requests disclosure of the following *Brady* material in  
 6 order that the Court and the defense may fully evaluate Korn Ferry’s illegal actions so as then  
 7 compose a truly fair sentence.

8 Given the obvious similarities between Mr. Nosal's case and Korn Ferry’s scheme with SSI’s  
 9 executives’ (Truc and Paquet) “fairness” demands immediate disclosure of the following basic  
 10 examples of *Brady* material in this case:

- 11 1. When did the government first learn of Korn Ferry’s trade secret theft from SSI and what  
 12 actions or investigations did the FBI, the United States Justice Department, the United States  
 13 Attorney’s Offices in the Northern District of California or the Eastern District of Illinois  
 14 pursue as a result of learning of the scheme to steal by Korn Ferry, Mr. Truc and Mr. Paquet;
- 15 2. Did the FBI or any other state or federal law enforcement agency investigate the theft of SSI  
 16 trade secrets from Korn Ferry, Truc and Paquet? If not, why not?
- 17 3. Was a request for prosecution of Korn Ferry, Mr. Truc or Mr. Paquet presented to any  
 18 State or Federal prosecuting office?
- 19 4. Has anyone from Korn Ferry, Spencer Stuart, Mr. Truc or Mr. Paquet been interviewed by  
 20 law enforcement regarding the allegations outlined in the Korn Ferry, Truc and Paquet  
 21 complaints? If not, why not?
- 22 5. Was O’Melveny & Myers LLP involved in representing Korn Ferry, Mr. Truc or Mr. Paquet  
 23 in the civil litigation that resulted from the trade secret theft described in the SSI complaints?
- 24 6. What are the terms of the confidential settlements with Korn Ferry, Mr. Truc, and Mr.  
 25 Paquet reached in both civil lawsuits involving trade secret theft from Spencer Stuart?

26 *DEFENDANT DAVID NOSAL’S MOTION FOR BRADY MATERIAL  
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1  
2 The above examples constitute the first step in fully learning the impact of the Korn Ferry  
3 trade secret thefts to this case. Depending on the *Brady* material disclosed or if the government  
4 continues to refuse to comply with Brady, a subsequent evidentiary hearing may be necessary.  
5 In either event, the defense may need additional time to review the materials in order to  
6 effectively present argument to the Court.

7 CONCLUSION

8 In our system of justice, striving for “fairness” does not end simply with the passage of  
9 time. Thomas Jefferson once observed that “*It is reasonable that everyone who asks Justice*  
10 *should do Justice.*” In this case, it is nothing less than outrageous that Korn Ferry, given its  
11 longtime role in this case, ignored this Court’s message of general deterrence and stole trade  
12 secrets from its longtime competitor. It would be equally outrageous to send Mr. Nosal to  
13 federal prison upon full consideration of Korn Ferry’s egregious actions.

14  
15 DATED: January 17, 2017      /s/  
16 STEVEN F. GRUEL  
Attorney for David Nosal